**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

:

v. : C-2020-3023129

:

Sunoco Pipeline, L.P. :

**ORDER**

**DENYING MOTION TO COMPEL**

**FILED BY GLEN RIDDLE STATION L.P. - SET I**

**Introduction**

On December 2, 2020, Glen Riddle Station, L.P. (Glen Riddle) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Sunoco Pipeline, L.P. (Sunoco), docket number C-2020-3023129. In its complaint, Glen Riddle averred that on or about May 13, 2020, Sunoco filed a Declaration of Taking in the Court of Common Pleas of Delaware County that concerned various portions of the Glen Riddle property that contains 124 residential dwelling units. Glen Riddle further averred that, in the taking action, Sunoco condemned temporary workspace easements and a temporary access road easement over their property for purposes of completing a pipeline project. Glen Riddle further averred that Sunoco is not complying with previous requirements of the Commission regarding a public awareness plan and standard operating procedures. Glen Riddle also identified several other alleged failures of Sunoco with regard to the property, including, parking and traffic safety concerns, unsafe work site, failure to follow government-mandated pandemic safety protocols, failure to communicate regarding a potentially hazardous leak, and structural and storm drainage concerns, among other things. Glen Riddle averred that Sunoco’s actions violated several provisions of the Public Utility Code and requested that the Commission enter an order enjoining or restraining Sunoco from engaging in further work at the property until the safety concerns are addressed. Glen Riddle attached multiple documents to its complaint in support of its position.

On December 23, 2020, Sunoco filed an answer and new matter in response to the complaint. In its answer, Sunoco admitted or denied the various averments Glen Riddle made in its complaint. In particular, Sunoco denied that it has not complied with the public awareness plan or standard operating procedures it is required to comply with. Sunoco also admitted or denied the various averments made by Glen Riddle with regard to the other alleged failures of Sunoco with regard to the property that were averred in the complaint. Sunoco provided significant detail in response to the averments made in the complaint and concluded by requesting that the complaint be dismissed with prejudice. Sunoco also attached multiple documents to its answer in support of its position.

In its new matter, which was accompanied by a notice to plead, Sunoco argued that the Commission lacks jurisdiction over Glen Riddle’s allegations regarding environmental law issues and permitting obligations, the validity and scope of easements and compliance with municipal ordinances and the Governor’s orders and regulations regarding Covid-19. Sunoco also argued that Glen Riddle has failed to state a claim upon which the Commission can grant relief. In part, Sunoco argued that Glen Riddle’s allegations regarding construction means and methods and relief seeking a work plan and schedule reflecting Glen Riddle’s preferences fail as a matter of law to state a claim upon which relief can be granted and should be dismissed.

Also on December 23, 2020, Sunoco filed preliminary objections in response to Glen Riddle’s complaint reiterating the arguments raised in new matter. Sunoco’s preliminary objections were granted in part and denied in part via an order dated January 28, 2021.

A hearing notice was issued on January 29, 2021 establishing an initial telephonic hearing for this matter for Wednesday, March 3, 2021 at 10:00 a.m. A prehearing order was issued on the same day setting forth various rules that would govern the hearing. On February 4, 2021, however, Sunoco filed a motion for a prehearing conference, revised procedural schedule and expedited response. Glen Riddle filed its answer to Sunoco’s motion on February 10, 2021. Sunoco’s motion was granted via order dated February 11, 2021. A hearing notice was issued on February 11, 2021 setting a call-in prehearing conference for Thursday, February 18, 2021 at 10:00 a.m.

However, on February 11, 2021, Glen Riddle filed a petition for interim emergency relief pursuant to Section 3.6 of the Commission’s regulations averring, among other things, that Sunoco, without prior notice, posted signs warning that all areas within 100 yards of its worksite at Glen Riddle’s property fall within a “danger” area that must be avoided. A scheduling order dated February 12, 2021 was issued memorializing the agreement of the parties regarding litigation of the petition for emergency relief. On February 16, 2021, however, Glen Riddle filed a petition to withdraw the petition for interim emergency relief. The petition to withdraw was jointly executed by counsel for both Glen Riddle and Sunoco. The petition for leave to withdraw the petition for interim emergency relief was granted via Initial Decision dated February 18, 2021 leaving the underlying complaint ready for adjudication.

As a result, a further hearing notice was issued on February 17, 2021 cancelling the hearing on the petition for interim emergency relief scheduled for February 18, 2021 and rescheduling the prehearing conference for the underlying complaint for Friday, February 26, 2021 at 10:00 a.m. A second prehearing order was issued on February 17, 2021 regarding that prehearing conference.

The further prehearing conference was held on February 26, 2021, as scheduled. A scheduling order was issued on February 26, 2021 memorializing the agreements reached at the further prehearing conference.

On February 26, 2021, Glen Riddle filed a motion to dismiss the objections of Sunoco and compel responses to Glen Riddle’s first set of interrogatories which were served on February 5, 2021. In its motion, Glen Riddle noted that Sunoco objected to the instructions and definitions in the first set of interrogatories, as well as interrogatory 19 and request for production of documents 1, 29, 36 and 37. Glen Riddle argued that Sunoco’s objections are meritless and should be rejected and Sunoco should be compelled to fully respond.

On March 2, 2021, Sunoco filed a motion for a protective order. Glen Riddle filed its answer to the motion on March 4, 2021. The motion for a protective order is pending.

On March 3, 2021, Sunoco filed an answer to Glen Riddle’s motion to compel. In its answer, Sunoco argued that Glen Riddle’s requests are burdensome and seek information that has no bearing on whether Sunoco is in violation of the Public Utility Code or Commission regulations and is unlikely to lead to the discovery of admissible evidence related to matters within the Commission’s jurisdiction. Notably, Sunoco noted in its answer that there is no longer a dispute with regard to requests for production of documents numbers 1 and 29.

Glen Riddle’s motion to compel is ready for disposition. For the reasons discussed below, the motion will be denied.

**Legal standard**

The Commission’s regulations allow parties the opportunity to conduct discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party. 52 Pa.Code § 5.321(c). It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. Id. Discovery is not permitted, however, if it is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden or expense; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the deponent, a party or witness. 52 Pa.Code § 5.361(a); *see also*, City of Pittsburgh v. Pa.P.U.C., 526 A.2d 1243 (Pa.Cmwlth 1987), *alloc. denied*, 538 A.2d 880 (Pa. 1988).

Furthermore, information is relevant if it tends to establish a material fact, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact. *See*, Petition of the Borough of Cornwall for a Declaratory Order that the Provision of Water Service to Isolated Customers Adjoining its Boundaries Does Not Constitute Provision of Public Utility Service Under § 102, Docket Number P-2015-2476211 (Order dated September 11, 2015) at 9-10, *citing*, Smith v. Morrison, 47 A.3d 1311 (Pa.Super 2012), *alloc. denied*, 57 A.3d 71 (Pa. 2012). Relevancy in discovery is broader than the standard used for admission of evidence at a hearing. Id. at 10, *citing*, Com. v. TAP Pharmaceutical Products, Inc., 904 A.2d 986 (Pa.Cmwlth 2006). The party objecting to discovery has the burden to establish that the requested information is not relevant or discoverable with any doubts regarding relevancy being resolved in favor of discovery. Id.

**Objections to instructions and definitions**

The dispute amongst the parties regarding instructions and definitions pertains to 1) the production of material alleged to be proprietary, 2) the definition of the term “document” and 3) the provision of a privilege log.

In its objections, Sunoco argued that it cannot be compelled to produce material alleged to be proprietary until a protective order has been entered. Sunoco added that the definition of “document” in the interrogatory instructions is overly broad, unduly burdensome and outside the scope of allowable discovery because it includes prior drafts of documents and handwritten notes, notations, records or recordings of any conversation. Sunoco argued, in part, that such documents are privileged and exempt from discovery.

In its motion to compel, Glen Riddle argued that more than 14 days have passed since Glen Riddle served Sunoco with interrogatories and document requests and Sunoco has not filed a petition for a protective order. Glen Riddle added that pursuant to Section 5.365 of the Commission’s regulations, Sunoco cannot refuse to respond to Glen Riddle’s discovery requests on the basis of them being confidential or proprietary. Glen Riddle also objected to the protective order proposed by Sunoco because it unfairly prejudices Glen Riddle’s right to discovery because it gives Sunoco too much discretion. With regard to the definition of “document,” Sunoco argued that draft responsive documents are discoverable, citing to Section 5.321 of the Commission’s regulations and relying in part on Sunoco’s own discovery instructions and definitions. Finally, Glen Riddle requested a “privilege log” be used to identify material that Sunoco believes are privileged.

In its answer to the motion to compel, Sunoco noted that a proposed protective order was submitted on March 2, 2021 and that Sunoco timely proposed a protective order to Glen Riddle and was awaiting Glen Riddle’s response. Sunoco also argued that Glen Riddle has defined “document” in a manner that is unreasonably burdensome and that seeks information that is not likely to lead to the discovery of admissible evidence, noting the inclusion of drafts and handwritten notes, among other things. Sunoco argued that “the extreme scope of this definition would impose an unreasonable burden on Sunoco.” Sunoco noted that the Commission’s regulations do not require production of a privilege log and that there is no basis for requiring one as part of general discovery regulations.

Subsequently, the parties exchanged several emails wherein further arguments were raised regarding whether Sunoco should be required to provide a privilege log.

Glen Riddle’s motion with regard to instructions and definitions will be denied.

With regard to the issue of the treatment of proprietary material, this issue is now moot. Sunoco filed a motion for a protective order on March 2, 2021 and Glen Riddle has filed its answer to it on March 4, 2021. An order regarding the dispute is forthcoming at which point there will be no reason that material alleged to be proprietary should not be exchanged. To the extent that the exchange of material alleged to be proprietary continues to be an issue after the protective order is issued, the parties are encouraged to resolve any disagreements amongst themselves first and bring any remaining disagreements to the presiding officer. Certainly, prior to the issuance of a protective order, the parties could have agreed to exchange information alleged to be proprietary as if a protective order is in place, meaning that the parties would treat the information as proprietary on their own accord. To the extent that any delay in receipt of information alleged to be proprietary on an informal basis causes or has caused any difficulties in litigating this matter, that issue can be addressed separately. Otherwise, this issue will be considered moot for purposes of disposing of Glen Riddle’s motion to compel.

With regard to the definition of the term “document” in the definitions and instructions section of the discovery request, it is unreasonable to include in a discovery request a request for drafts of documents. Initially, drafts of documents are considered work product that may be privileged and, therefore, outside of the scope of discovery. For example, Section 5.323 of the Commission’s regulations regarding hearing preparation material provides that “with respect to the representative of a party other than the party’s attorney, discovery may not include disclosure of … draft versions of written testimony or exhibits.” 52 Pa. Code § 5.323(a). Whereas this issue of the definition of documents is being raised in this motion to compel within the context of definitions and instructions, it is unclear whether a specific discovery request would pertain to hearing preparation materials.[[1]](#footnote-1) Nonetheless, the definition of “document” in Glen Riddle’s discovery request Set I should not include drafts. In addition, Sunoco is correct that requiring drafts of documents to be discoverable would be unduly burdensome.

Furthermore, Glen Riddle’s arguments in its motion will be rejected. Glen Riddle relies on Section 5.321 of the Commission’s regulations in support of its position that drafts of documents are discoverable. However, nothing in Section 5.321 provides that drafts of documents are discoverable. 52 Pa.Code § 5.321. Section 5.321 does not mention drafts. Whereas the scope of discovery is broad, it does not include drafts of documents. In addition, Glen Riddle’s argument that Sunoco’s own discovery instructions and definitions request drafts of documents does not mean that drafts of documents are discoverable. If Glen Riddle does not wish to provide drafts of its own documents in response to Sunoco’s discovery, it can submit its own objection. Even though Sunoco has requested drafts of documents in response to its discovery does not mean that drafts of documents are discoverable.

Finally, with regard to whether Sunoco should be compelled to provide a “privilege log” as part of its discovery responses, this request will also be denied. There is no provision in the Commission’s regulations that require a party to produce a privilege log. Certainly, to the extent that a party believes that a discovery request is objectionable based on a privilege, the party is required to state as such in a timely objection. And, a party can voluntarily provide a privilege log to another party. There otherwise is no requirement that a privilege log should be provided and none will be created here.

As a result, Glen Riddle’s motion to compel with regard to the instructions and definitions contained in its Set I discovery will be denied.

**Interrogatory I-19**

Interrogatory I-19 states: “Identify all monies that Sunoco has paid to the Township in addition to the $1.8 million identified in the Letter Agreement between Sunoco and the Township dated September 26, 2016, and the purpose of each such payment.”

In its objection, Sunoco argued that the request seeks information that is irrelevant to this proceeding and not reasonably tailored to lead to the discovery of admissible evidence. Sunoco noted that “whether Sunoco paid monies to the Township and the amount of any such payments has nothing to do with the allegations in this proceeding – whether Sunoco’s construction on complainant’s property and communications with complainant comply with the Public Utility Code.”

In its motion to compel, Glen Riddle argued that it is entitled to discovery on whether Sunoco made any payments to the Township regarding unsafe practices, noting that Sunoco agreed to reimburse the Township for all expenses incurred in conjunction with the easements and the oversight of any maintenance, repairs and/or replacement of the pipelines and the use of easements.

In its answer to the motion to compel, Sunoco argued that the letter agreement pertains to the easement. Sunoco reiterated the relevant portions of the agreement and noted that the Commission has no jurisdiction to hear arguments regarding the scope and validity of an easement. Sunoco also argued that the request is “so open ended as to be a fishing expedition, not reasonably tailored to discover admissible evidence.”

Glen Riddle’s motion with regard to interrogatory I-19 will be denied. To begin, Sunoco is correct that the Commission’s jurisdiction regarding the scope and validity of easements is limited. This issue was discussed in the order granting in part and denying in part preliminary objections previously filed in this case by Sunoco and will not be reiterated here. The Commission has jurisdiction over some activities pertaining to easements but the issue in the letter agreement as explained by Sunoco in its answer to Glen Riddle’s motion is beyond what the Commission has jurisdiction to hear with regard to easements. As Sunoco noted, the letter agreement references various fees associated with the negotiation, review and drafting of the easement. These things are beyond the scope of what the Commission has authority to hear regarding easements.

Furthermore, Glen Riddle’s motion to compel argued that Glen Riddle is entitled to discovery regarding payments to the Township ***related to Sunoco’s unsafe practices***. But interrogatory I-19 is not limited to payments to the Township ***related to Sunoco’s unsafe practices***. Rather, the interrogatory inquires about ***all monies***. This request is therefore overly broad and unduly burdensome. It is not clear that the request is reasonably calculated to lead to the discovery of admissible evidence. As a result, it is beyond the scope of discovery.

As a result, Glen Riddle’s motion with regard to interrogatory I-19 will be denied.

**Request for production of documents I-36 and I-37**

Request for production of documents I-36 and I-37 request: “All communications by and between James R. Flandreau, Esquire, or any of his partners or associates, and Duane Morris LLP, relating in anyway to Sunoco or the property” and “all communications by and between Sunoco and any of its representatives, including, but not limited to, Energy Transfer Partners and Duane Morris, LLP, on the one hand, and the Township or any representatives of the Township, including, but not limited to, legal counsel, engineers, officials, council members and the Township Managers, on the other, relating to work in the Township, payments, safety and/or the property.”

In response to these requests for production of documents, Sunoco objected that these requests seek information that is irrelevant to this proceeding. Sunoco argued that any communications between the Township solicitor and Duane Morris and “all communications between Sunoco and the Township” are not relevant to whether Sunoco’s construction on Glen Riddle’s property and Sunoco’s communications with Glen Riddle comply with the Public Utility Code.

In its motion to compel, Glen Riddle argued with regard to both requests for production I-36 and I-37 that the standard for discovery is not relevance but whether the request is reasonably calculated to lead to the discovery of admissible evidence. Glen Riddle added that “to the extent that the Township and Respondent are communicating with respect to the Property, the pipeline, or safety concerns, those communications are clearly calculated to lead to the discovery of relevant and admissible evidence relating to the serious public safety concerns raised in Complainant’s complaint.”

In its answer to the motion to compel, Sunoco argued with regard to both requests for production of documents I-36 and I-37 that these requests are not reasonably calculated to lead to the discovery of admissible evidence and that Glen Riddle has failed to justify that such communications may be relevant to Glen Riddle’s safety concerns. Sunoco added that these requests are burdensome and a fishing expedition that should not be allowed, especially when considering the expedited nature of this proceeding. Sunoco also argued that the requests are unduly burdensome because they are duplicative of a request made pursuant to the Right-to-Know law.

Glen Riddle’s motion with regard to request for production of documents I-36 and I-37 will be denied. These requests for production of documents are unduly burdensome. Request I-36, for example, asks for “all documents…. relating in anyway.” This is an overly broad request and would be unduly burdensome to answer. It is not clear the extent to which James R. Flandreau, Esquire or any of his partners or associates may be communicating with Duane Morris regarding to Sunoco or the property. There could well be many communications that fit within the scope of that request that are not likely to lead to the discovery of admissible evidence. The request should be narrowed and is overly broad as written. Although request I-37 concludes with the qualification that it asks for such communications that relate “to the work in the Township, payments, safety and/or the property,” this request is also overly broad and unduly burdensome as well. Sunoco is correct that such requests produce the type of “fishing expedition” that the Commission does not allow.[[2]](#footnote-2)

Finally, as noted above, discovery is not permitted if it relates to a matter that is privileged. The information requested in requests for production of documents I-36 and I-37 clearly state that they seek communications by and amongst attorneys. Such communications are privileged and, therefore, are beyond the scope of discovery. Sunoco did not make such an objection here on the basis of privilege, however, so such arguments will not be controlling. In addition, the phrasing of request for production of document I-37 – asking for communications between Mr. Flandreau and Energy Transfer Partners and Duane Morris “on the one hand” and the Township or any representatives of the Township “on the other” – runs afoul of the Commission regulations that requires that “each interrogatory should be limited to a single question or request for information.” While this requirement is not strictly enforced, here the form of the question further warrants not requiring Sunoco to answer it.

As a result, Glen Riddle’s motion with regard to request for production of documents I-36 and I-37 will be denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Glen Riddle Station, L.P.’s motion to dismiss objections of Sunoco Pipeline, L.P. and compel responses filed on February 26, 2021, at docket number C-2020-3023129 is hereby denied.

Dated: March 5, 2021 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

**C-2020-3023129 - GLEN RIDDLE STATION, L.P. v. SUNOCO PIPELINE L.P.***updated 3/3/21*

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1. Commission regulations prohibit general objections. Section 5.342(c)(2) requires that “an objection must: … (2) restate the interrogatory or part thereof deemed objectionable ***and the specific ground for the objection***.” 52 Pa. Code § 5.342(c)(2) (emphasis added). This regulation is often interpreted to mean that objections must pertain to specific discovery requests and not to discovery instructions or definitions. While the objection in this case is detailed, it pertains to the instruction and definition portion of the interrogatories and should more appropriately be raised within the confines of a specific discovery request or requests. [↑](#footnote-ref-1)
2. In addition, Sunoco noted in its answer to the motion to compel that “the requests are unduly burdensome because they are duplicative of a request made pursuant to the Right-to-Know law.” This cuts both ways. That is, if the material has already been produced for Glen Riddle in response to a request under the Right-to-Know law then it is not unduly burdensome to produce it a second time. However, if the material has already been produced for Glen Riddle then why does Glen Riddle need it to be produced a second time. [↑](#footnote-ref-2)